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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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JUL 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
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Review of the Commission's)
Rules Governing the Low Power)
Television Service)
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)

MM Docket No. 93-114
RM-7772

REPLY COMMENTS OF

THE OFFICE OF SPECIAL DISTRICTS,

SAN BERNARDINO COUNTY, CALIFORNIA

To: The Commission:

The Office of Special Districts, San Bernardino County, California ("Special Districts"), by its attorney, here respectfully submit Reply Comments in the proceeding shown in the caption above. This Reply confines itself to the Comments put forward by Community Broadcasters Association ("CBA"); CBS, Inc. ("CBS"), Dr. Byron W. St. Clair ("St. Clair"), Venture Technologies Group, Inc. ("Ventech"), and jointly by the Association of Maximum Service Telecasters and the National Association of Broadcasters ("MSTV/NAB"). The following is offered by way of reply:

1. Flexible Acceptance Standards.

1. The Commission's proposals to relax acceptance criteria, Notice, paras. 2 to 14, appear to have met with uniform support from the parties referenced above. The proposals advance the goal of streamlined processing "in an appropriate and flexible manner" according to MSTV/NAB.¹ Special Districts submits that these refinements should be implemented at an early date.

2. Modification of Facilities.

2. The commenting parties generally endorse an enhanced level of flexibility in the treatment of changes, currently thwarted by the effect of the complex "major change" definition. In their comments, Special Districts suggested that the "bounded contour" proposal may be too inflexible still, because it precludes such valuable modifications as an overall increase of power from the same location or the replacement of an omnidirectional antenna with a directive one.

3. Other parties wrestled with the same problem. CBA suggested that, in addition to the Commission's approach, a licensee should be permitted to extend its contour, for example, up to five km, or up to ten per cent (the latter presumably in sq.

¹ MSTV/NAB, at fn. 3, oppose the use of terrain shielding to resolve interference conflicts, other than those arising between LPTV stations. However, the Notice points out, at para. 13, that existing policy permits the use of terrain in one of two ways: (1) letters of assent from potentially affected stations; and (2) detailed terrain profiles. MSTV/NAB's rigid and unsupported approach would deny its own membership the opportunity in a proper case to grant written assent, even if the proposed facility were extending a member's primary signal and even if it were obvious that interference would not be caused thereby.

km of predicted coverage), see CBA Comments, para. 10. Dr. St. Clair (at p. 3) suggested an allowed increase of 20 per cent to the area of the protected contour. CBS appears to take the Commission's example in Notice para. 16 quite literally, as an allowable 15 km radius, and endorses this as a bounding contour for changes, CBS at fn. 3.

4. Special Districts submit that these comments underscore the need for flexibility beyond what the Commission has proposed, but find no logical reason to prefer 10 per cent, 20 per cent, or 15 km as a bright-line test. We advocated a two-step criterion. First, there should be no restriction to same-channel, non-site changes at all. Secondly, the Commission's bounding circle can be utilized to evaluate site changes in excess of 200 meters. In one way, this approach is more cautious than the alternatives just mentioned. It means that the specification of geodetic coordinates in an initial application does accord general notice to the world of the facilities, as built or modified, that are likely to eventuate over time.

5. The one discordant note here is trumpeted by MSTV/NAB, in the bulk of its filing. According to MSTV/NAB, "the most

Commission to adopt flexible approaches in licensing, knowing that individual interference cases can and will be resolved on a priority basis. The by-product is enhanced, interference-free service to the public. In this view, the secondary allotment system primarily is a means of according the maximum number of first-come first-serve authorizations, in an orderly manner. It is for this reason that Special Districts urged that the Commission take this occasion strongly to reaffirm its commitment to secondary status, and a core element of the LPTV service.

6. In practice, as the Commission noted in its original Report and Order, "The translator service has a long history of operators successfully resolving interference problems by cooperative efforts with the viewers." 51 R.R. 2d 477 at 494, fn. 34 (1982). As CBA points out, p. 1, fn. 1, some 1,352 LPTV stations had been licensed as of May 31, 1993. This has been accomplished with an almost total absence of interference problems.² Unless and until it can be shown that a new wave of "scofflaw" interference is imminent, the issue should be resolved in favor of new service to the public. As the Commission said in 1982, with MSTV and NAB very much in mind, ". . . we do not intend to cater to full service licensees' unreasonable fears of competition from low power stations, and fetter the low power service for that reason," Report and Order, *supra*, at 488.

² MSTV and NAB (at fn. 5) unearth one interference case, in Chicago-Rockford, but even there do not assert that the complaining station was unable to resolve the matter to its satisfaction.

7. Interestingly, CBS, Inc., a member in good standing of NAB and of MSTV, supports the Commission's proposed changes to the modification standards, Comments, pp. 4 - 5. Similarly, Special Districts provide re-broadcast of network owned-and-operated stations and other important Los Angeles VHF pillars of the MSTV/NAB establishment, pursuant to rebroadcast consent. To the degree that service can be enhanced, these primary stations stand to benefit from the enhanced circulation. Increasingly, the hoary efforts to hobble new television service appear outmoded.³

3. Call Signs.

8. In a similar vein, MSTV and NAB appear to stand outside the magic circle of favorable comment on the Commission's proposal to enable LPTV to use four letters of the Roman alphabet to denominate their services. MSTV and NAB fear "confusion," whereas the better term might be, "competition." Making LPTV honor its secondary service obligations to the letter, and then making LPTV competitors comparable so far as identity, ratings, and access to the program marketplace will mean enhanced competition, never an evil by itself.

³ The advent of a new day in television, with digitization, compression and advanced TV service, presents the greatest challenge to large full service TV operations since 1952. To compete effectively into the next century, broadcast TV will be in urgent need of multi-channel capacity -- the more, the better. It may not become evident to NAB and MSTV until much later that its efforts to thwart head-to-head competition among television broadcasters will have materially assisted in the destruction of this great industry.


4. Conclusion.

Special Districts commend the Commission on this initiative, and hope that it will result in new rules in the near future.

Respectfully submitted,

Office of Special Districts
San Bernardino County,
California

By: _____


Michael Couzens,
Attorney

Law Offices of Michael Couzens,
385 Eighth Street, Second floor
San Francisco, CA 94103

(415) 621-4030

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CERTIFICATE OF SERVICE

I certify that on July 16, 1993, I mailed a copy of the foregoing reply comments by First Class Mail, postage prepaid, to the following:

Peter Tannenwald
Krent, Fox, Kintner,
Plotkin & Kahn
250 Connecticut Avenue, N.W.
Washington, D.C. 20036-5539
[Counsel for Community
Broadcasters Assoc.]

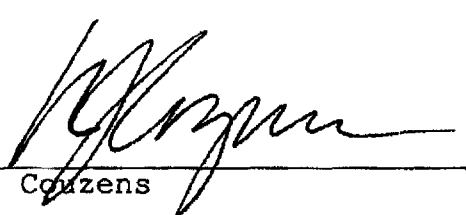
Harry Spire, Esq.
Venture Technologies Group
3642 Calababas Road
Suite 104
Calababas, CA 91302-1592
[Counsel for Venture
Technologies Group., Inc.]

Edward E. Jaekel, Esq.
Andrew J. Siegel, Esq.
CBS, Inc.
1 West 52 Street
New York, NY 10019

Gregory M. Schmidt
Charles W. Logan
Govington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
[Counsel for Association for
Maximum Service Television, Inc.]

Henry L. Baumann, Esq.
Henry D. Umansky, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

B. B. W. St. Clair
1750 West 74th Place
Arvada, CO 80005


Michael Couzens